

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2663/96

New Delhi, this the 25th day of July, 1997.

Hon'ble Mr. N. Sahu, Member (A)

Dr. A. R. Quazi,
S/o Late Sh. O. R. Quazi,
R/o Quarter No. 116-D,
Sector-IV,
Pushp Vihar,
New Delhi- 110 017

... Applicant

(By Advocate : Shri C.M. Khan)

Versus

Union of India : Through

1. The Secretary
Ministry of Health &
Family Welfare,
New Delhi

2. The Director CGHS
5th Floor,
Nirman Bhawan,
New Delhi

... Respondents

(By Advocate : Shri M.K. Gupta)

ORDER (ORAL)

Hon'ble Mr. N. Sahu, Member (A) -

The grievance in this OA is for a direction to quash the impugned order No. Z-16020/9/95-CHS-VI dated 10.01.1996 issued by the Ministry of Health & Family Welfare transferring the applicant, a Senior Medical Officer working in the CGHS, Delhi to CGHS, Calcutta with immediate effect and in public interest. The applicant impugnes this order of transfer on the ground that this was done with the sole motive to accommodate and favour one Dr. (Ms.) Sootia Bilquees related to a Member of Parliament and transferred as an ad-hoc employee from Calcutta to Delhi. It is alleged that the applicant who is a Senior Medical

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officer cannot be transferred on the same equation vis-a-vis an ad-hoc doctor. His second point is that the Union Public Service Commission has already advertised the vacant post at Calcutta and according to him that post has already been filled up and, therefore, there is no post which is vacant for the applicant. His third ground is that there are four doctors who are senior to him liable to be transferred to Calcutta as per the transfer policy applicable. He finally submits that working as a Senior Medical Officer in Delhi since 1991 he cannot now be posted as Junior Medical Officer in Calcutta, and therefore, the transfer order is illegal. Learned counsel for the respondents submitted that the allegations of favouritism are not substantiated. It is stated that the cases of all the three Medical Officers and three Senior Medical Officers working in Delhi were considered and as the applicant has the longest stay in Delhi, he was transferred from Delhi to Calcutta. The second categorical assertion was made at page 4, para 4 of the counter affidavit that "the applicant was transferred to the post of Senior Medical Officer at CGHS Calcutta for performing duties and responsibilities attached to the post of Senior Medical Officer (Unani). The transfer did not amount to demotion at all as alleged."

2. Learned counsel for the respondents also cited the decision of the Supreme Court in Union of India & Ors. Vs. S.L. Abbas - 1993(4) SCC 357. Several principles governing transfers have been

authoritatively laid down in this decision. The Apex Court had held that a transfer order can be challenged only if it is malafide or is made in violation of statutory provisions; otherwise, the courts cannot interfere. Even non-compliance with instructions or guidelines is held to be not adequate to interfere or quash the order. It is made clear that the authority competent to transfer is not obliged to justify a transfer by adducing reasons therefor. The Apex Court further held that it is for the executive to decide who will be transferred where, according to the exigencies of administration and the courts cannot interfere in such transfer orders.

3. I have carefully considered the submissions of rival counsel. In order to raise or sustain an allegation of malafide, the person who imputes must name the person who had acted in a malafide manner and the onus is on him to substantiate the allegations. The applicant's vague averments of malafides made in this petition is therefore unsustainable. Secondly, if the applicant alleges that the transfer guideline was violated, it is for him to place on record what the said guidelines are and which of the guidelines has been violated. Guidelines are not placed on record. Thirdly, a very valid contention has been raised by the applicant's counsel, namely, that he is a Senior Medical Officer and discharging the functions of the post of Senior Medical Officer since 1991. There is no post of Senior Medical Officer at Calcutta. Ex-facie his transfer as Senior Medical Officer to Calcutta where

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no post is vacant, is patently unjustified. I have already extracted the affidavit of the respondents at page 4, para 4 to the effect that the applicant was transferred to the post of Senior Medical Officer, Calcutta CGHS and he was designated to perform the duties and responsibilities of a Senior Medical Officer. This strikes at the very foundation of the applicant's argument. It is submitted that there was an advertisement for filling up the vacant post at Calcutta and at the Bar, learned counsel for the applicant states that those posts have been filled up. There is no material that there are no vacant posts for the applicant. If there is no vacant post in Calcutta or if there is no post of Senior Medical Officer, then obviously the applicant would be entitled to bring this to the notice of the Secretary, Ministry of Health & Family Welfare (Respondent No.1) and to the Director, CGHS (Respondent No.2) as soon as he joins the same place and Respondent No.1 shall, after verifying the representation of (a) non-existence of the post (b) non-existence of the post of Senior Medical Officer, consider an appropriate placement for the applicant in accordance with the rules and guidelines. Subject to these observations, the OA is disposed of;

Issue DASTI. No costs.

Karan Singh
(N. SAHU)
Member (A)
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/Kant/